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3629	

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Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

This is in reference to response received by the office on 27 June 2005 to the office action mailed on 25 April 2005. Claims 1 – 18 are pending in the application. Claim 1 is an independent claim. Claims 2 – 18 claim dependency on claim 1.

Independent claim 1 is rejected under 35 USC 103(a) over Hertz Corporation hereinafter known as Hertz in view of Avis Rent-A-Car System, Inc. hereinafter known as Avis.

In response to appellant's argument that during patent examination, the pending claims must be given their broadest "reasonable" interpretation consistent with the specification. The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those of ordinary skill in the art would reach. The use of "electronic rental agreement" in the claims and Appellant's definition thereof (i. e., electronic rental contract which is legally binding on the parties entering into it) is entirely consistent with the interpretation that those of ordinary skill in the art would reach. See, for example, "Information on Hertz Corporation, 1997 - 2000" (Hertz) (p. 34) ("... when the car is used in accordance with all terms and conditions of the rental agreement."). A true and correct copy of this page of Hertz, of record, is attached hereto as Appendix 4 for the convenience of reference by the Board. This reference, which

was cited by the Examiner and which does not teach or suggest an electronic rental agreement, favors the use of the term "rental agreement" over the term "rental contact".

However, cited reference "Information on Hertz Corporation, 1997 - 2000" (Hertz) (p. 33) ("... Some rates and vehicle types require a guarantee and may have a cancellation penalty ..... If a penalty applies, complete information will be included on the rate screen and on confirmation screen.). A true and correct copy of this page of Hertz, of record, is attached hereto for the convenience of reference by the Board. This reference, which was cited with the office action and does teach that a customer has to agree to the terms of the agreement prior to confirming the acceptance of the agreement. In this case, if there would have been a penalty associated with the rental agreement, then the rental company has legal rights to impose the penalty when the customer cancels the rental agreement. In the disclosure filed 27 October 2000, appellant has not clearly defined that the "electronic rental agreement" is a legally binding rental contract as argued by the appellant.

In response to appellant's argument that in connection with Hertz, this is also the broadest reasonable interpretation that those of ordinary skill in the art would reach. In other words, such a company would not permit a vehicle to be taken and used by a renter when there was a mere "arrangement between parties regarding a course of action" as was asserted by the Examiner. Hence, the Examiner's position is not reasonable and is not what those of ordinary skill in the art would reach.

However, in the disclosure originally filed 27 October 2000, on page 14, lines 13 – 17, appellant recites "if the reservation and rental were completed online, a customer 178 may still be directed to the rental counter 168, where expedited service is preferably provided, in order to obtain an optional item (e.g., a stroller 180) before obtaining a car 182 for rental". Also, appellant has not claimed the limitation of permitting a vehicle to be taken and used by a renter when there is arrangement between parties.

In response to appellant's argument that position as taken by the Examiner, is also inconsistent with Appellant's specification at page 12, line 6 ("accepted rental contract").

However, in the disclosure filed 27 October 2000, appellant has not clearly defined that the "electronic rental agreement" is a legally binding rental contract as argued by the appellant. Appellant is referring to Fig. 6L. In Fig. 6L, appellant has provided a print button with the label "print contract". Also, on Fig. 6L, appellant recites, "you can use your browser's print button to print a hard copy of this confirmation". Appellant has not clearly defined that the confirmation page is the legally binding contract as argued by the appellant.

In response to appellant's argument that in the Examiner's Answer (Response to Argument) (for example, without limitation, p. 13, 12; p. 13, T3; p. 14, 11; p. 14, T3; p. 15, 11, among others), the Examiner states that Appellant "is arguing a contract, but, the appellant is not claiming a contract". Actually, what has been very consistently

presented by Appellant is an "electronic rental agreement (i. e., electronic rental contract which is legally binding on the parties entering into it)," which is the broadest reasonable interpretation consistent with both the Appellant's specification and with the interpretation that those of ordinary skill in the art would reach.

However, agreement also means "the act or fact of agreeing" which is the broadest reasonable interpretation that those of ordinary skill in the art would reach.

In response to appellant's argument that the claim term is, instead, "rental agreement" or "electronic rental agreement". Appellant does not claim any "reservation agreement".

However, nature of an agreement is a business choice. As responded to earlier, Hertz teaches possibility of penalty when the customer changes an accepted term of agreement. With this type of agreement with Hertz, customer has to agree to the terms and conditions of the agreement prior to Hertz sending a confirmation of the agreement.

In response to appellant's argument that a reasonable interpretation of "reservation agreement" from the cited references, in most instances, is that a reservation is not binding on the parties. See, for example, Appellant's Figure 6K which provides that "If you do not want to accept the Terms and Conditions of this contract we will still hold your car and you can pick it up at the rental counter". Hence, Appellant has expressly disclosed that a reservation is not binding on the parties.

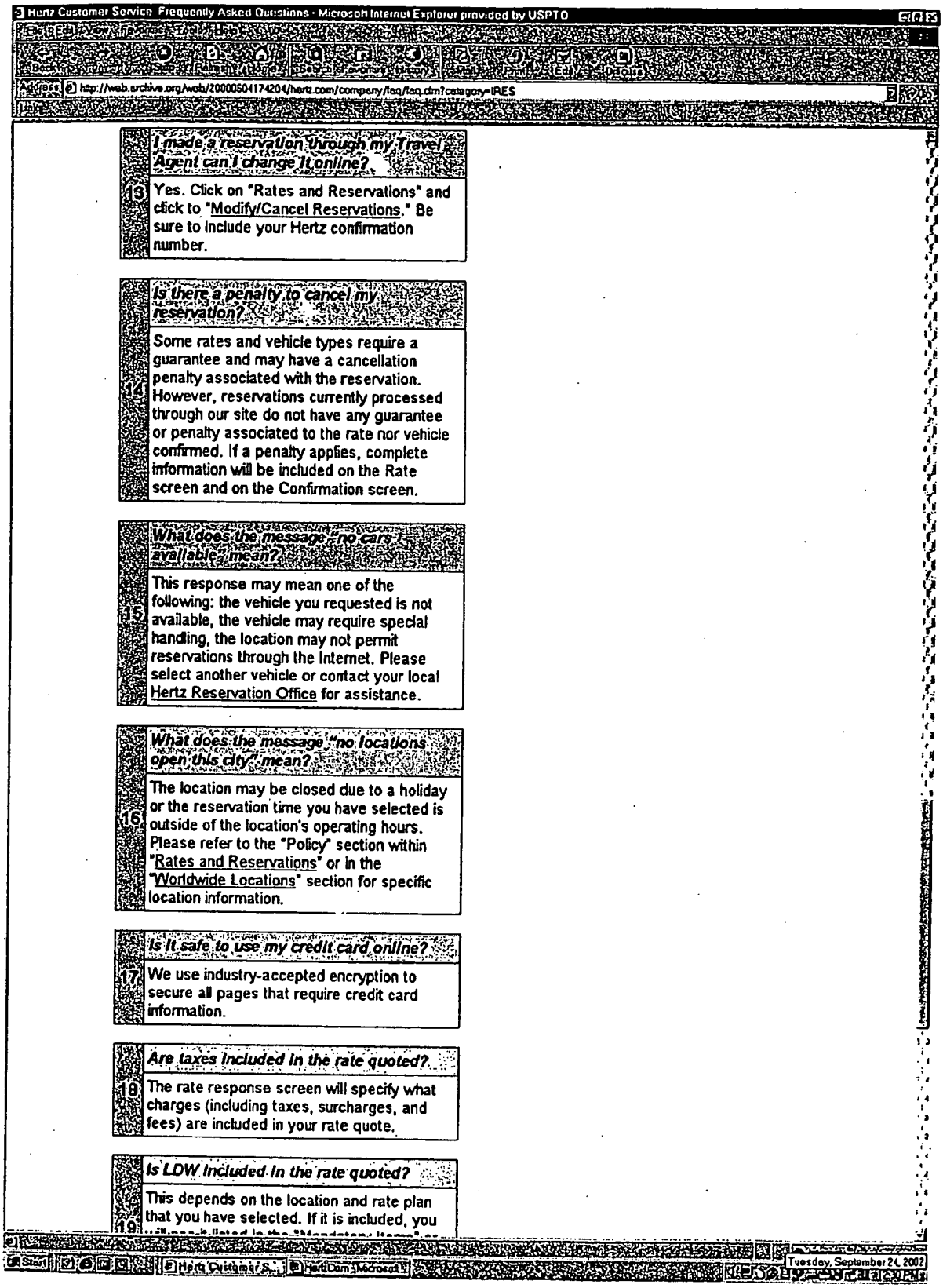
However, as responded to earlier, Hertz teaches the agreements with penalty associated with the agreement which makes it a binding agreement.

In response to appellant's argument that that, at best, Hertz and Avis teach or suggest an electronic reservation, which subsequently requires a future printed and hand-signed physical rental agreement, since there is no meeting of the minds between Hertz and the user as to exact price and to exact optional items associated with the reservation. Appellant is clearly arguing why the cited references do not teach or suggest electronically accepting a rental proposal; and storing an electronic rental agreement (i.e., electronic rental contract, which is legally binding on the parties entering into it) based upon an accepted rental proposal.

However, Hertz in view of Avis does not teach that the proposed quotation is for information purpose only and will change when the customer arrives to pick the vehicle. However, Hertz in view of Avis teaches that customer will receive a vehicle at the quoted price when they arrive to receive the vehicle.

In response to appellant's argument that examiner does not address the point that the cited references do not teach or suggest that a customer can modify information from a master rental agreement without modifying the master rental agreement.

However, Hertz page 17 teaches some of the rental-related information from master rental agreement. Hertz does teach to restrict that the customer cannot change this information. However, Hertz teaches to allow customers to make changes.


Hertz Customer Service Frequently Asked Questions - Microsoft Internet Explorer provided by USPTO
http://web.archive.org/web/20000504174204/hertz.com/company/faq/faq.dm?category=RES
I made a reservation through my Travel Agent can I change it online?
13 Yes. Click on "Rates and Reservations" and click to "Modify/Cancel Reservations." Be sure to include your Hertz confirmation number.
Is there a penalty to cancel my reservation?
14 Some rates and vehicle types require a guarantee and may have a cancellation penalty associated with the reservation. However, reservations currently processed through our site do not have any guarantee or penalty associated to the rate nor vehicle confirmed. If a penalty applies, complete information will be included on the Rate screen and on the Confirmation screen.
What does the message "no cars available" mean?
15 This response may mean one of the following: the vehicle you requested is not available, the vehicle may require special handling, the location may not permit reservations through the Internet. Please select another vehicle or contact your local Hertz Reservation Office for assistance.
What does the message "no locations open this city" mean?
16 The location may be closed due to a holiday or the reservation time you have selected is outside of the location's operating hours. Please refer to the "Policy" section within "Rates and Reservations" or in the "Worldwide Locations" section for specific location information.
Is it safe to use my credit card online?
17 We use industry-accepted encryption to secure all pages that require credit card information.
Are taxes included in the rate quoted?
18 The rate response screen will specify what charges (including taxes, surcharges, and fees) are included in your rate quote.
Is LDW included in the rate quoted?
19 This depends on the location and rate plan that you have selected. If it is included, you
Tuesday, September 24, 2002

In response to applicant's argument that in the Examiner's Answer (Response to Argument) (p. 16,12), the Examiner refers to using a flag to store information as being an old and known design choice used in programming, and to it being a design choice to decide what data fields to use flags for storing information. It is submitted that it is improper to fail to consider Appellant's Claims 1, 10, 11 and 12, taken as a whole.

However, storing flag (binary information like Yes and No, other indicators) is old and known in the art. For example, flag to determine whether an employee is a full time employee, and airline may use flag to indicate frequent flyer status of their customers, flag to indicate marital status, membership to indicate active or expired etc.

For the above reasons, it is believed that the rejections should be sustained.

September 6, 2005

Respectfully Submitted,

Naresh Vig

Naresh Vig
Examiner
Art Unit 3629